

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|                                   |   |  |
|-----------------------------------|---|--|
| <b>THEODORE DAVIS,</b>            | ) | <b>Case No.: 2:05-cv-632-MHT</b>       |
|                                   | ) |  |
| <b>Plaintiff,</b>                 | ) | <b>DEFENDANTS' RESPONSE TO</b>         |
|                                   | ) | <b>PLAINTIFF'S BRIEF IN SUPPORT OF</b> |
|                                   | ) | <b>CLAIM</b>                           |
| <b>vs.</b>                        | ) |  |
| <b>ARMSTRONG RELOCATION, Lln,</b> | ) |  |
| <b>EDNA DUMAS, CITY OF</b>        | ) |  |
| <b>MONTGOMERY, et. al.,</b>       | ) |  |
|                                   | ) |  |
| <b>Defendants</b>                 | ) |  |

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COME NOW the Defendants, by and through undersigned counsel, and submits the following response to the plaintiff's Brief in Support of Claim.

**PROCEDURAL BACKGROUND**

This case was originally filed in the Circuit Court of Montgomery County. The Complaint was amended to add the City of Montgomery and officer Shelly Watts as defendants and alleging, among other things, a claim under 42 U.S.C. §1983, after which the said added defendants removed this case to this Court.

By order of October 17, 2005, this Court instructed the plaintiff to identify the claims he is making under 42 U.S.C. §1983 or §1985 and brief the Court on the facts underlying the claim, the grounds for jurisdiction, the facts which give rise to a claim against the City of Montgomery, and the qualified immunity defense raised by the City and Watts.

**42 U.S.C. §1983**

The Plaintiff's claims under §1983 against the City of Montgomery, based upon the facts alleged in his Complaint and subsequent pleadings, center around the alleged actions of two of the City's police officers: one Shelly Watts and another unidentified officer. The facts alleged by plaintiff, tend to indicate that the plaintiff was allegedly deprived of his property (both the house to which he claims an ownership interest and the personal property which was removed

from said house) without due process and under color of state law. Plaintiff alleges that the officers involved aided and used the authority of their office to both prevent Plaintiff from securing his property inside the house and to enforce what he claims was an unlawful eviction by the defendant Dumas.

While not stated specifically by plaintiff, it is evident that the federally guaranteed right that he alleges was breached under color of law was his Fourteenth Amendment right to due process. The Defendants deny the material allegations made by Plaintiff.

Respectfully submitted this 18<sup>th</sup> day of November, 2005.

/s/ Wallace D. Mills  
WALLACE D. MILLS (MIL090)  
Assistant City Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of November, 2005, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following parties or counsel:

Michael Rountree, Esq.  
George Lamar Beck, Jr., Esq.  
C. Winston Sheehan, Jr., Esq.  
Jeffrey Wilson Smith, Esq.  
Judy B. Van Heest, Esq.

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None

/s/Wallace D. Mills  
Wallace D. Mills  
Assistant City Attorney  
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